

**Dissenting Views to Accompany  
H.R. 4777, the “Internet Gambling Prohibition Act”**

We, respectfully, submit the following set of dissenting views to express our serious concerns with HR 4777, the “Internet Gambling Prohibition Act,” and the approach that it takes to deal with this very important issue.

As an initial matter, instead of providing minors with greater protections, HR 4777 threatens to make it much easier for minors to utilize the services of online gambling companies that operate across state lines. In addition, the legislation has the potential to generate a substantial increase in acts of money laundering and undoubtedly will expose various banks and Internet service providers to excessive liability and burdensome regulations.

According to the bill’s lead sponsor, Representative Bob Goodlatte (R-VA), one of the primary purposes behind the introduction of HR 4777 was to stop online gambling from occurring.<sup>1</sup> However, in its current form, the legislation only prohibits certain forms of online gambling while expressly permitting several other forms to proceed unfettered. Interestingly enough, these ‘special interest carve-outs’ were the main focal point of a recent article in *The Hill* newspaper.<sup>2</sup>

In that article, HR 4777 was compared to a similar Internet gambling that had been introduced by Rep. Goodlatte and defeated in a previous Congress. The article determined that,

*“...The same Internet gambling legislation Abramoff fought so hard to defeat on behalf of a client that helped states conduct lotteries over the Internet now includes an exemption to protect those lotteries.”<sup>3</sup> (emphasis added)*

The article went on to point out that in addition to the exemption for lotteries, HR 4777 also includes language to protect wagering on interstate pari-mutuel betting on horse races from the scope of the bill’s ban.<sup>4</sup>

These blanketed exemptions are obviously the byproduct of powerful gambling interests and can be directly traced back to three particular provisions of the bill - sections 3, 5 and 6. Section 3, for example, includes language which expressly exempts gambling on intrastate sanctioned activities, such as lotteries.

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<sup>1</sup> Hearing on H.R. 4777, the “Internet Gambling Prohibition Act,” before the Subcommittee on Crime, Terrorism and Homeland Security of the House Committee on the Judiciary, 109<sup>th</sup> Cong. (2006) (testimony of Rep. Goodlatte, Member, House Comm. on the Judiciary).

<sup>2</sup> Patrick O’Connor, *Abramoff Gets Payback in Gaming Bill*, *The Hill*, March 29, 2006, pg. 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Section 5, a late addition to the underlying text of the bill and only added during the course of the Full Committee's markup, incorporates a rule of construction which maintains that,

*"Nothing in this Act may be construed to prohibit any activity that is allowed under Public Law 95-515 as amended (15 U.S.C. 3001 et seq.)."*<sup>5</sup> (emphasis added)

It's worth noting that it has been the longstanding position of members of the horse racing industry that Public Law 95-515 (often referred to as the "Interstate Horseracing Act"), along with its subsequent amendments, provides individuals with the right to legally cast bets on interstate pari-mutuel horse racing contests.<sup>6</sup>

Finally, Section 6 of the bill, which was also added during the course of the Full Committee's markup of the legislation, incorporates language expressing the Sense of Congress that,

*"...[HR 4777] does not change which activities related to horse racing may or may not be allowed under Federal law..."*<sup>7</sup> (emphasis added)

In other words, this new language, in unmistakable terms, makes clear once-and-for-all that the scope of the bill's ban does not expressly prohibit online gambling on interstate competitions involving horse races.

To fully understand the impact this exemption will have on Internet gambling companies who provide services in this sector, one only need to consider the public statements made by representatives of the horse racing industry the day after our full committee's markup of HR 4777. On that day, the National Thoroughbred Racing Association (NTRA) issued a press release that included the following:

The House of Representatives Judiciary Committee on Thursday passed a bill sponsored by Representative Bob Goodlatte (R-VA) that would crack down on off-shore gambling and on gambling with the assistance of the Internet.

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*The bill includes an exemption that would allow the United States horse racing industry to continue to conduct interstate, account, and Internet wagering.* (emphasis added)

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<sup>5</sup> See, Section 5 of HR 4777, the "Internet Gambling Prohibition Act," as reported by the House Committee on the Judiciary, 109<sup>th</sup> Cong. (2006).

<sup>6</sup> Letter from the Honorable William E. Moschella, Assistant Attorney General, U.S. Department of Justice to F. James Sensenbrenner, Chairman, House Committee on the Judiciary (May 24, 2006) (on file at the U.S. Department of Justice).

<sup>7</sup> See, Section 6 of HR 4777, the "Internet Gambling Prohibition Act," as reported by the House Committee on the Judiciary, 109<sup>th</sup> Cong. (2006).

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‘Today was excellent news for the racing industry,’ said Greg Avioli, the NTRA’s Executive Vice President. ‘Not only did the bill pass by a significant margin, but three separate amendments to either slip out or substantially limit our exception were all defeated.’

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‘Despite that opposition and close to 90 minutes of heated debate, we were able to prevail on every vote.’

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‘For the horse racing industry, this is particularly important because having that exception allows horse racing to continue to operate interstate simulcasting and account wagering.,’ Avioli said. *‘If that bill would have passed without the exception in it, it would have effectively outlawed those activities.’*<sup>8</sup> (emphasis added)

These statements are reminiscent of comments made by the NTRA when a similar bill introduced by Congressman Goodlatte was considered in 2001. As reported by the National Journal:

[Gregory Avioli] said that as a result of ‘well-spent contributions we made in Washington to various campaign committees, excellent work by our lobbyists, and just a lot of time educating Congressman Goodlatte and his staff, on the day before they introduced the bill they went back and made one final revision to say, ‘This does not apply to any wagering [conducted in accordance] with the Interstate Horseracing Act.’”<sup>9</sup>

It is for these reasons, and those that follow, that we respectfully dissent.

1) **HR 4777 ONLY BANS CERTAIN FORMS OF ONLINE GAMBLING, WHILE LEGALIZING MANY OTHERS**

HR 4777 proposes to address the concerns and problems created by Internet gambling by prohibiting those in the gambling business from transmitting or facilitating the placement of a bet or wager. However, despite its title and language, HR 4777 is not a prohibition on Internet gambling. Rather, the legislation is simply a regulatory bill that prohibits certain types of Internet gambling while expressly sanctioning others. The legislation expressly exempts (1) interstate Internet betting on horse racing; (2) intra-state Internet betting on lotteries; (3) intra-tribal Internet betting; and (4) certain intra-state Internet betting. At the same time, the bill prohibits (1) Internet betting on dog racing; (2) Internet betting on jai alai; (3) interstate Internet betting on lotteries; and (4) Internet betting on casino games.

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<sup>8</sup> NTRA Press Release available at <http://www.ntra.com/content.aspx?type=pac&id=18064>.

<sup>9</sup> *Lobbying and Law - High Stakes on Web Gambling*, The National Journal, May 13, 2006.

When one compares the activities that are prohibited and those that are allowed, it is difficult to determine exactly where the line is being drawn. There seems to be little difference between betting on a dog race and betting on a horse race; all of these involve similar amounts of chance. Earlier this year, the Department of Justice expressed similar concerns stating that the legislation “would permit gambling over the Internet from the home and favor certain industries over others.”<sup>10</sup>

**2) H.R. 4777 EXPOSES BANKS TO BURDENSOME REGULATIONS THAT CREATE COMPLIANCE CONCERNS**

H.R. 4777 would amend the prohibition against interstate gambling and criminalize the knowing acceptance of credit, credit proceeds, electronic fund transfers or other such monetary payments by anyone in the gambling business. The burden of regulation and compliance created by this proposal is substantial, as a key enforcement mechanism would require banks to identify and block transactions between bank customers and Internet gaming companies.

This proposal does not recognize that the check clearing system and the Automated Clearing House (ACH) network do not have the same capabilities as the credit card association networks to identify different types of transactions. These systems were never intended to identify illegal activity, monitor individual transactions and regulate enforcement functions. The payments system was not designed to be a transaction monitoring service. It was designed to be an effective and efficient method for transferring dollars from one party to another. This legislation, if passed, would not only necessitate a massive overhaul of our Nation’s check clearing and ACH systems, but also create enormous regulatory burden requiring the deputization of financial institutions to identify and block illegal transactions.

According to National Automated Clearing House Association (“NACHA”), over twelve billion transactions worth more than \$28 trillion were conducted by the Automated Clearing House Network in 2004, up from the approximately three billion transactions worth \$10 trillion in 1994. Financial institutions rely heavily on ACH transfers as a more efficient and less expensive means of moving funds than the primary alternatives of paper checks and wire transfers. As is clear from the sheer volume of ACH transactions, the efficient operations of ACH networks is critical to the functioning of the United States financial system.

ACH transactions, however, involve only the information necessary to process the payments quickly and effectively. The ACH itself, which is merely a conduit for transactions, has no means of obtaining additional information beyond what banks provide. Banks research their customers before opening their accounts and monitor the accounts for suspicious activity patterns, but they have no practical means of learning the facts surrounding each individual transaction in which a customer engages. Given that banks originate and receive literally billions

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<sup>10</sup> Hearing on H.R. 4777, the “Internet Gambling Prohibition Act,” before the Subcommittee on Crime, Terrorism and Homeland Security of the House Committee on the Judiciary, 109<sup>th</sup> Cong. (2006) (testimony of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, U.S. Department of Justice).

of ACH transactions each year, many of them automatically requested, it would be virtually impossible for banks to inquire about and describe each ACH transaction in detail.

One of the most difficult aspects of implementing the proposed regulation is that financial institutions would have the judicial-like duty of distinguishing between legal and illegal transactions because, as earlier mentioned, HR 4777 does not prohibit all forms of Internet gambling. Rather, it creates a distinction between legal and illegal Internet gambling. This distinction turns on the type of gambling (horseracing versus poker), the location of the transaction (interstate versus intrastate or tribal) and the source of the gambling (offshore Internet website versus US - based casino). Thus, the burden is placed on a bank to identify if a transaction originated at an Internet gambling site, to distinguish what portion of the transaction was legal or illegal and to determine where the transaction occurred. Particularly, in the case of checks that move with the customer, it is impossible for a bank to determine the location of a transaction and thus, whether a wager was legal or illegal.

H.R. 4777, if passed, would necessitate a cumbersome and expensive overhaul of the ACH and check networks. This overhaul would impede their efficiency and accuracy and increase inconvenience and costs to customers. Not surprisingly, similar sentiments were recently echoed in a letter written by R. Bruce Josten, Executive Vice-President, Chamber of Commerce to Chairman Sensenbrenner and Ranking Member Conyers.<sup>11</sup> Among other things, Mr. Josten proclaimed that,

*“...requiring financial institutions to seek to determine the purpose of such transactions is a substantial regulatory burden which could require substantial changes to the systems by which such instruments are processed.”<sup>12</sup> (emphasis added)*

Ultimately, our Nation’s payments system is the global model of speed and efficiency. It was designed to permit consumers and businesses to complete transactions quickly and accurately. The proposed legislation would undermine the system and threaten the economy. Under this proposed regulatory framework, the simple act of writing a check would require recording extensive additional information, including the location of the transaction, business of the payee and legal character of each part of the transaction. The likely result is that banks would deny many legal transactions and the payments system will be significantly slowed.

3) **H.R. 4777's FAILURE TO BAN ALL FORMS OF ONLINE GAMBLING WILL LIKELY RESULT IN AN INCREASE IN THE NUMBER OF UNDERAGE GAMBLERS**

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<sup>11</sup> Letter from R. Bruce Josten, Executive Vice President of Government Affairs, US Chamber of Commerce to F. James Sensenbrenner and John Conyers, Jr., Chairman and Ranking Member (respectively), House Committee on the Judiciary (May 24, 2006) (on file with the author).

<sup>12</sup> Id.

As previously mentioned, while HR 4777 portends to prohibit all forms of online gambling, the legislation includes numerous exemptions for several of the more powerful and popular gambling industries. One exemption, in particular, relates to the horse racing industry and the ability of an individual bettor, even after the enactment of this bill, to legally cast bets on interstate pari-mutuel contests involving horses. This exemption is of great concern.

Recent studies have often demonstrated the ease by which minors have been able to gain access to various Internet gaming sites to engage in online wagering. In fact, a 2004 study conducted by GamCare, Citizencard and the Children's Charities' Coalition on Internet Safety (CHIS) tested 37 such sites to ascertain the level of difficulty minors would encounter when trying to set up accounts for purposes of online gambling.<sup>13</sup> Not surprisingly, the study's findings determined that a minor was able to successfully open up an account and access gambling systems on 30 of these sites.<sup>14</sup>

Unfortunately, reports such as this are becoming far too common. Just last fall, the Annenberg Public Policy Center announced that almost 600,000 youth (ages 14-22) reported gambling on the Internet on a weekly basis.<sup>15</sup> This figure is roughly double the number of youth who reported engaging in such conduct in the prior year (2004)<sup>16</sup>, but significantly less than the nearly 20% of young men (ages 14-22) who acknowledge using one or more Internet gambling sites on a monthly basis.<sup>17</sup>

Figures such as these, when coupled with HR 4777's current exemption and the recent comments of horse racing executives, are of great concern. After all, earlier this month, individuals within the industry were reported to have publicly acknowledged that they intend to use the Internet to target youth as potential gambling customers.<sup>18</sup> As reported in the Baltimore Sun:

'Over the 25 years I've been in this industry, not one day has gone by when I haven't heard people complaining that our customer base is getting older and we can't attract

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<sup>13</sup> BBC News, *Children 'able to gamble on net'* (July 27, 2004), available at [http://news.bbc.co.uk/2/hi/uk\\_news/3927645.stm](http://news.bbc.co.uk/2/hi/uk_news/3927645.stm)

<sup>14</sup> Id.

<sup>15</sup> Press Release, The Annenberg Public Policy Center of the University of Pennsylvania, *Card Playing Trend in Young People Continues* (September 28, 2005) (available at [http://www.annenbergpublicpolicycenter.org/07\\_adolescent\\_risk/GamblingRelease20050928.pdf](http://www.annenbergpublicpolicycenter.org/07_adolescent_risk/GamblingRelease20050928.pdf))

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Bill Ordine, *Horse racing is betting on Internet wagering; Md. industry chief De Francis says it could attract youth*, The Baltimore Sun, May 15, 2006, at A1.

young people,’ said Joseph A. De Francis, chief executive officer of the Maryland Jockey Club and executive vice president for operations of interactive betting channels for parent Magna Entertainment corp. *‘And this gives us an opportunity to expand into the youth market unlike any we’ve ever had before.’*<sup>19</sup> (emphasis added)

**4) HR 4777 MAY INVITE RETALIATION BY TRADING PARTNERS AND ALLIES, INCLUDING THE UNITED KINGDOM.**

In signing the General Agreement on Trade in Services (GATS), the United States committed to provide foreign entities access to its market for remote gambling and betting services. In April 2005, a WTO Appellate Body held that U.S. federal laws prohibiting Internet gambling are inconsistent with U.S.’s GATS commitment, because they restrict foreign nations from accessing the gambling market via the Internet. Most federal U.S. prohibitions were held to be permissible, however, under the GATS exemption for “laws necessary to protect public morals.” This exemption is permitted so long as the law in question is applied in a non-discriminatory manner.

The court held that one U.S. federal law, the Interstate Horseracing Act (IHA), does not meet the criteria for this exemption, because it appears to permit betting on horseracing over the Internet and phones across state lines while prohibiting the foreign supply of this service. The decision also makes clear that, if properly pled before an international body, inconsistent U.S. state laws regarding Internet gambling would likely violate the GATS agreement as well.

The present case was brought by the nation of Antigua and Barbuda, but was supported by the U.K., E.U. and Japan. The U.S. had until April 3, 2006, to bring its laws into conformity with its international commitments, and having failed to do so, Antigua and Barbuda may now seek to impose trade retaliations and, more importantly, major trading partners may bring litigation permitting them to do the same. These trading partners, like most other developing nations, have taken steps to regulate Internet gaming, rather than prohibiting it outright.

The Office of the U.S. Trade Representative has indicated its strategy for complying with the WTO ruling is to confirm that all forms of Internet gaming are prohibited, including online horserace betting, whether foreign or domestic. However, any statute that permits some forms of Internet gaming while prohibiting others could undermine the U.S.’s claim to the “public morals” exception under the GATS, and expose it to additional trade sanctions.

By validating certain forms of Internet gambling to the exclusions of others, H.R. 4777 further entrenches U.S. violation of these commitments and exposes the U.S. to costly retaliation by the United Kingdom, European Union, Japan, and other major trading partners that are moving to regulate Internet gambling, rather than simply prohibit it.

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<sup>19</sup> Id.

## **Description of Amendments Offered by Democratic Members**

### **1. Amendment Offered by Rep. Robert Wexler (#1)**

Description of amendment: The Wexler amendment sought to eliminate from the scope of the definition of ‘unlawful Internet gambling,’ bets made in connection with pari-mutuel animal racing or jai-alai activities that were expressly authorized or licensed by the state in which they were cast or received.

The amendment was defeated by a vote of 15 to 21. Ayes: Representatives Conyers, Berman, Boucher, Scott, Watt, Lofgren, Waters, Wexler, Weiner, Schiff, Sanchez, Wasserman Schultz, Coble, Feeney, Delahunt. Nays: Representatives Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Bachus, Hostettler, Green, Keller, Issa, Pence, Forbes, King, Feeney, Franks, Gohmert, Van Hollen. Sensenbrenner, Inglis,

### **2. Amendment Offered by Rep. Robert Wexler (#2)**

Description of amendment: The Wexler amendment proposed to strike sections 5 and 6, in their entirety, from the text of the underlying bill. As earlier mentioned, Section 5 provided a rule of construction regarding the Interstate Horseracing Act. While, Section 6 added language declaring it to be the Sense of the Congress that none of the bill’s prohibitions were intended to affect the horse racing industry.

The amendment was defeated by voice-vote.

### **3. Amendment Offered by Rep. John Conyers, Jr.**

Description of amendment: The Conyers amendment proposed to modify section 5 of the bill to require all interstate gambling transactions covered under that provision to occur with secure and effective age and identification verification technology.

The amendment was defeated by a vote of 14 to 17, with one member (Gohmert) having voted present. Ayes: Representatives Green, Conyers, Berman, Scott, Watt, Lofgren, Waters, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz. Nays: Representatives Coble, Smith, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Keller, Issa, Pence, Forbes, King, Feeney, Boucher, Sensenbrenner.

### **4. Amendment Offered by Rep. Bobby Scott**

Description of amendment: The Scott amendment sought to impose a fine or criminal penalty of up to 2 years imprisonment against any individual who unlawfully places a bet or wager with an illegal gambling entity, as defined under the terms of the bill.

The amendment was defeated by a vote of 6 to 30. Ayes: Representatives Green, Gohmert, Conyers, Berman, Scott, Lofgren. Nays: Representatives Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Bachus, Inglis, Hostettler, Keller, Issa, Pence, Forbes, King,



Feeney, Franks, Boucher, Watt, Jackson Lee, Waters, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz, Sensenbrenner.

John Conyers, Jr.  
Sheila Jackson Lee  
Robert Wexler  
Linda T. Sanchez